

STATE OF WASHINGTON
GAMBLING COMMISSION

In the Matter of the Revocation of the License to)	NO. CR 2011-01253
Operate Gambling Activities of:)	
)	
Chopsticks)	NOTICE OF ADMINISTRATIVE
Vancouver, Washington,)	CHARGES AND OPPORTUNITY FOR
)	AN ADJUDICATIVE PROCEEDING
Licensee.)	

I.

The Washington State Gambling Commission issued Chopsticks license number: 05-20718, authorizing Class "A" Punchboard/Pull-Tab activity in Vancouver, Washington. The Commission issued this license, which expires on September 30, 2012, subject to the licensee's compliance with state gambling laws and Commission rules.

II.

Rick Day, Director of the Washington State Gambling Commission, charges the licensee with the following violations of Chapter 9.46 RCW, and WAC Title 230.

SUMMARY:

On June 16, 2011, Jian Hua Wu, 50% owner and substantial interest holder of Chopsticks, was charged with:

- a) Defrauding a Public Utility 1st Degree
- b) Manufacture of a Controlled Substance-Marijuana
- c) Malicious Mischief 1st Degree
- d) Maintaining a Dwelling for Controlled Substance

On or about October 6, 2011, an Amended Information was filed charging Mr. Wu as follows:

- a) Defrauding a Public utility 1st Degree
- b) Manufacture of a Controlled Substance-Marijuana
- c) Malicious Mischief 2nd Degree

On October 6, 2011, Mr. Wu pled guilty to these three counts.

FACTS:

On December 2, 2011, the licensee was served by the Gambling Commission with Findings of Fact, Conclusions of Law and Order of Summary Suspension, which included the following allegations:

1) On September 16, 2011, in the context of an investigation to determine if Chopsticks qualified for continuing licensure, Commission staff became aware that one of the licensee's owners had been charged with four felonies in Clark County Superior Court.

2) An Agent obtained and reviewed certified court records related to Jian Hua Wu's criminal charges. Mr. Wu is a 50% owner and substantial interest holder of Chopsticks. Yan Ke Chen owns the remaining shares according to Commission files as of December 2, 2011.

3) Review of those records reflected that on June 16, 2011, Mr. Wu was charged with:

- Defrauding a Public Utility 1st Degree. Mr. Wu "did cause physical damage to the property of another in the amount exceeding five thousand dollars, and/or did defraud a public utility by diverting services in an amount exceeding \$1,500, and/or tampering with utility service in furtherance of criminal activity."
- Manufacture of a Controlled Substance, Marijuana. Mr. Wu "did knowingly manufacture a controlled substance, to-wit: Marijuana."
- Malicious Mischief 1st Degree. Mr. Wu "did knowingly and maliciously cause an interruption or impairment of services rendered to the public by physically damaging or tampering with a public utility, power, or communication."
- Maintaining a Dwelling for Controlled Substances. Mr. Wu "did knowingly keep or maintain a dwelling ... which is resorted to by persons using controlled substances in violation of the law for the purpose of keeping or selling controlled substances, to-wit: Marijuana."

4) On June 13, 2011, a Clark County pre-booking/Probable Cause Sheet was filed in the Clark County Superior Court in the licensee's name. The probable cause statement alleged that Clark County Sheriff's officers executed a search warrant for Manufacturing of Marijuana. Before executing the search, Mr. Wu and a co-defendant arrived at the house. Mr. Wu had the keys to the residence. In the residence, over 1,600 marijuana plants in various growth stages were found. During the search, a power diversion was located, and PUD officials estimated that approximately \$10,000 worth of kilowatt-hours of electricity was stolen. The interior of the residence, which was a rental, was destroyed by mold, false walls, with damage estimated at tens of thousands of dollars. Mr. Wu waived his Miranda rights, and admitted that he had been hired to add chemicals and water to the marijuana. Mr. Wu told officers that he did not start the power at the residence; however, records show that Mr. Wu was the power subscriber for the residence.

5) On or about October 6, 2011, an Amended Information arising from the same facts was filed, charging Mr. Wu as follows:

Defrauding a Public Utility 1st Degree (Count 1)

Manufacture of a Controlled Substance, Marijuana (Count 2)

Malicious Mischief 2nd Degree (Count 3)

6) On October 6, 2011, Mr. Wu pled guilty to these three same felonies.

7) On Count 1, Mr. Wu was sentenced to serve seven days in jail, with credit for time served, in addition to 173 days on work release. On Count 2, Mr. Wu was sentenced to serve seven days in jail, with credit for time served, in addition to 173 days on work release. On Count 3, Mr. Wu was sentenced to serve seven days in jail, with credit for time served, in addition to 173 days on work release. All jail time was to run concurrently. Mr. Wu was also ordered to pay \$15,467.07 in restitution in addition to customary fees and financial penalties.

8) Mr. Wu failed to report to Commission staff both his pending charges and his guilty finding. The following activity has occurred since the licensee was served with an Order of Summary Suspension on December 2, 2011:

a) On December 2, 2011, the licensee requested a stay hearing, and an administrative hearing on the merits of the charges. On December 8, 2011, the stay hearing was held. On December 12, 2011, Administrative Law Judge John Gray issued an order Denying Request for Stay.

b) In his order, Judge Gray found that as of December 5, 2011, the Department of Revenue's business license website showed Mr. Wu and Ms. Chen as the "governing people" of Chopsticks. Judge Gray found further that as of December 5, 2011, the Secretary of State's corporation division website showed Mr. Wu and Yan Ke Chen as the "governing people" of Chopsticks.

c) On December 12, 2011, Chopsticks' license file was assigned to an agent for review of several documents received from the licensee. The agent's review revealed the following:

- On September 15, 2011, Commission staff received an Annual Renewal Application for Commercial Business from Chopsticks. The document identifies Yan "Angie" Chen, President of Chopsticks, on page two as the highest ranking individual of chopsticks. On page three, item F, the application asks if there have been any changes to any officers, board members, partners, LLC members or substantial interest holders. Ms. Chen marked the "yes" box, and again listed herself as President. On page six, Ms. Chen signed the application as president.
- The application is dated September 10, 2011. The September 2011 application is in direct conflict with information currently on file with Commission staff. The September 2010 application, dated September 9, 2010, was submitted to Commission staff September 22, 2010, and identifies Jian Wu as President on the same sections noted above.
- On December 2, 2011, Commission staff received a Separation Property Agreement dated March 28, 2011, between Ms. Chen and Mr. Wu. The agreement states, in pertinent part, that "Yan Ke Chen contributed 80% of the finances in acquiring the restaurant and building for Chopsticks Restaurant and Lounge." The agreement also states that Mr. Wu "wishes to be relieved of his obligations and Yan Ke Chen agrees to hold him harmless for all said obligation attached to Chopsticks Restaurant & Lounge business property..."

VIOLATIONS:

- 1) **RCW 9.46.075(1)** provides the Commission may revoke any license for any reason or reasons, it deems to be in the public interest.
- 2) **RCW 9.46.075(2)** provides the Commission may revoke any license where the licensee knowingly causes, aids, abets, or conspires with another to cause, any person to violate any of the laws of this state or the rules of the commission.
- 3) **RCW 9.46.075(4)** provides the Commission may revoke any license where the licensee has been convicted of, or forfeited bond upon a charge of, or pleaded guilty to, forgery, larceny, extortion, conspiracy to defraud, willful failure to make required payments or reports to a governmental agency at any level, or filing false reports therewith, or of any similar offense or offenses, or of bribing or otherwise unlawfully influencing a public official or employee of any state or the United States, or of any crime, whether a felony or misdemeanor involving any gambling activity or physical harm to individuals or involving moral turpitude.
- 4) **RCW 9.46.075(7)** provides the Commission may revoke any license where the licensee makes a misrepresentation of, or fails to disclose, a material fact to the commission.
- 5) **RCW 9.46.075(10)** provides the Commission may revoke any license when the licensee has pursued or is pursuing economic gain in an occupational manner or context which is in violation of the criminal or civil public policy of this state if such pursuit creates probable cause to believe that the participation of such person in gambling or related activities would be inimical to the proper operation of an authorized gambling or related activity in this state. For the purposes of this section, occupational manner or context shall be defined as the systematic planning, administration, management or execution of an activity for financial gain.
- 6) **WAC 230-03-085(1)** provides that the Commission may revoke any license when a licensee commits any act that constitutes grounds under RCW 9.46.075 for revoking a license, or commits any other act that the commission determines constitutes a sufficient reason in the public interest for revoking a license.
- 7) **WAC 230-03-085(7)** provides that the Commission may revoke any license when a licensee fails to provide us with any information required under commission rules within the time required, or, if the rule establishes no time limit, within thirty days after receiving a written request from us.
- 8) **WAC 230-03-085(8)** provides that the Commission may revoke any and all licenses or permits of any holder, when the holder poses a threat to the effective regulation of gambling, or creates or increases the likelihood of unfair or illegal practices, methods, and activities in the conduct of gambling activities, as demonstrated by: (a) Prior activities; or (b) Criminal record; or (c) Reputation; or (d) Habits; or (e) Associations.
- 9) **RCW 9.46.075(8)** provides the Commission may revoke any license when a licensee fails to prove, by clear and convincing evidence, that she is qualified in accordance with the provisions of this chapter.

10) **RCW 9.46.153(1)** provides that it shall be the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence the necessary qualifications for licensure of each person required to be qualified under this chapter, as well as the qualifications of the facility in which the licensed activity will be conducted.

11) **WAC 230-06-085(1) and (2)** require that licensees must report to us in writing within thirty days all criminal actions filed against the licensee, any manager of the licensed gambling activity, the business organization, or any person holding a substantial interest in the business organization. Commission staff must receive a copy of the final written decision or settlement within thirty days after the case is resolved.

12) **WAC 230-06-080(1)** requires all licensees to report any oral or written contracts and agreements which alter the licensee's organization.

13) **WAC 230-06-105 (1)** requires that licensees must report in writing changes made to their organization's management, directors, officers, or any other position that makes management decisions directly affecting the operation of their licensed gambling activity. Commercial business licensees must report within thirty days.

On October 6, 2011, Mr. Wu was found guilty of three felonies: Manufacture of a Controlled Substance, Marijuana; Malicious Mischief 2nd Degree; and Defrauding a Public Utility 1st Degree. On Count 1, Mr. Wu was sentenced to serve seven days in jail, with credit for time served, in addition to 173 days on work release. On Count 2, Mr. Wu was sentenced to serve seven days in jail, with credit for time served, in addition to 173 days on work release. On Count 3, Mr. Wu was sentenced to serve seven days in jail, with credit for time served, in addition to 173 days on work release. All jail time was to run concurrently. Mr. Wu was also ordered to pay \$15,467.07 in restitution in addition to customary fees and financial penalties.

The licensee failed to report Mr. Wu's criminal charges and guilty pleas, which are material facts, in violation of WAC 230-06-085. Mr. Wu and Ms. Chen entered into a "Separation Property Agreement" dated March 28, 2011, wherein Mr. Wu released all of his business ownership interests in Chopsticks to Ms. Chen. The agreement was not provided to Commission staff until December 2, 2011, in violation of WAC 230-06-080 and WAC 230-06-105.

Chopsticks has failed to establish by clear and convincing evidence, as required by RCW 9.46.153(1), that it is qualified to be licensed. As a result, there are grounds to revoke Chopsticks' license based on RCW 9.46.075(1), (2), (4), (7), (8), and (10) and WAC 230-03-085(1), (7) and (8).

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III.

Jurisdiction of this proceeding is based on 9.46 RCW, Gambling, chapter 34.05 RCW, the Administrative Procedure Act, and WAC Title 230.

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

Rick Day, being first duly sworn on oath, deposes and says: He has read this Notice of Administrative Charges and Opportunity for An Adjudicative Proceeding, knows the contents, and believes the same to be true, and that he is the duly appointed and qualified Director of the Washington State Gambling Commission and in that capacity has executed these Charges.



RICK DAY, DIRECTOR

SUBSCRIBED AND SWORN TO before me
this 29 day of December, 2011.



NOTARY PUBLIC in and for the State of

Washington residing at Thurston County
My Commission expires on 10-19-15



STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

I hereby certify that I have this day served a copy of the document upon all parties of record in the proceeding by mailing a copy thereof, properly addressed with postage prepaid, by regular and certified mail to each party to the proceeding or his or her attorney or authorized agent.

Dated at Olympia, Washington this 29 day of December, 2011.

Communications and Legal Department
Washington State Gambling Commission